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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

A Decision of Great Importance

Attention is directed to the decision of the Supreme Court of Illinois, reported on page 50 of this number of The Corporation Journal, holding that preferred stock in corporations of that state may not, because of restriction in the state constitution, be deprived of voting power. This opinion is of interest to corporation counsel everywhere because it illustrates the danger of attempting to erect a corporate structure on the basis of laws untested by litigation. Records of The Corporation Trust Company, available without charge to members of the bar, will assist in the selection of places and methods of organization previously approved by state officials and by the courts.

Federal Tax Returns

A most important matter to corporations is that, while the time to file tax returns has been extended to June 15, 1922, this privilege rests upon the doing on or before March 15, of three things: (1) A statement must be filed setting forth the reason why the return cannot be completed, and a formal request for the extension; (2) A tentative return must be filed, and (3) At least one-fourth of the estimated amount of the tax must be paid. See paragraph 3041 of The Corporation Trust Company's Federal Income Tax Service, 1922.


President.

THE CORPORATION TRUST COMPANY

37 Wall Street, New York

Affiliated With

The Corporation Trust Company System

Organized 1892

15 Exchange Place, Jersey City

Chicago, 112 W. Adams Street
Boston, 53 State Street
(Corporation Registration Co.)
Pittsburgh, Oliver Bldg.
Washington, Colorado Bldg.
Los Angeles, Title Insurance Bldg.
(The Corporation Company)



Philadelphia, Land Title Bldg.
Portland, Me., 261 St. John Street
St. Louis, Federal Reserve Bank Bldg.
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(Corporation Trust Co. of America)
Albany Agency, 153 State Street
Buffalo Agency, Ellicott Square

DEPARTMENTS

Corporation Department—Assists attorneys in the incorporation of companies and in the licensing of foreign corporations to do business in every state and Canadian province, and subsequently furnishes annual statutory representation service, including office or agent required by statute.

Report and Tax Department—Notifies attorneys when to hold meetings, file corporation reports, and pay state taxes in every state and Canadian province.

Legislative Department—Reports on pending legislation; furnishes copies of bills and of new laws enacted by Congress.

Trust Department—Acts as trustee under deed of trust, custodian of securities, escrow depository and depository for reorganization committees.

Transfer Department—Acts as registrar and transfer agent of stocks, bonds and notes.

Federal Department—Reports decisions of the United States Supreme Court and rulings of the various Government departments. Furnishes agent at Washington for common carriers to accept service of orders, process, etc., of Interstate Commerce Commission.

SERVICES

Federal Income Tax Service—Reports the Federal Income Tax Law and the official regulations, etc., bearing thereon.

Federal War Tax Service—Reports the Excess Profits Tax Law and practically all the other strictly Internal Revenue Tax Laws, except the Income Tax Law, due to the war, and the official regulations, etc., bearing thereon. (Does not touch on law provisions and regulations having to do with wine, spirits, soft drinks, tobacco, narcotics or child labor.)

New York Income Tax Service—Reports the New York Personal and Corporation Income Tax Laws and the official regulations, etc., bearing thereon.

Federal Reserve Act Service—Reports the Federal Reserve Act and the official regulations, etc., bearing thereon.

Federal Trade Commission Service—Reports the Federal Trade Commission Act and the Federal Anti-Trust Act (the Clayton Act) and the official orders, rulings, complaints, etc., bearing thereon.

Stock Transfer Guide and Service—Embodies extracts from the statutes and decisions of the various states and jurisdictions relating to transfers of corporation stock by executors, administrators, and guardians. Gives uniform requirements of the New York Stock Transfer Association, inheritance tax rates, and law provisions showing whether or not it is necessary to procure waivers or court orders. Reports new and amendatory legislation affecting stock transfers.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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Announcing the Stock Transfer Guide and Service

This official organ of the New York Stock Transfer Association has been issued by The Corporation Trust Company in two loose-leaf volumes. Its object is to supply accurate, comprehensive, readily accessible and always up-to-date information for the safe and proper registration and transfer of securities. It will be found to be invaluable to transfer agents, to registrars, to corporations acting as their own transfer agents, to brokers, to attorneys, and to the trust departments of trust companies and of national banks.

None but the initiated can fully appreciate the importance of the movement toward standardized practice initiated by the New York Stock Transfer Association, and made available through this Service.

in charge of transfer work is further assisted by the collection of statutory references in each of the states bearing upon the necessity or not of court orders on proposed transfers by guardians, executors and administrators, and whether and what statutory provisions exist with respect to the powers of one executor or administrator in case there are two or more executors or administrators. Inheritance tax laws with respect to waivers, instructions and reproductions of forms in the matter of securing waivers, and stamp tax laws and regulations are also among the present contents. These contents will be extended as further data are prepared and become available.

II.

To the Transfer Agent and to the Corporation Transferring Its Own Stock, the Stock Transfer Guide and Service, through the "Uniform Requirements" of the Stock Transfer Association, brings the conclusions of over fifty experts on the most perplexing problems continually presented in the registration and transfer of securities. This aid to the judgment of persons

To the Stock Broker, to Trust Departments of Trust Companies and National Banks, and to the Attorneys for Estates in Process of Settlement, this Service brings a means for securing prompt transfer of securities. Information in advance of exact requirements, together with practical directions for the securing of waivers, insures a saving of time, prevents loss of a market where prompt delivery is necessary, hastens obtaining the cash

from a sale, and reduces the risk of loss by messenger or by mail under the old system of submission, return and resubmission to the transfer agent.

III.

Some of the Complications in the Issue and Transfer of Stock Which Caused the Establishment of the Stock Transfer Guide and Service.

Special knowledge and experience are necessary properly and safely to issue and transfer shares of stock. A corporation is liable in damages for refusal to issue stock or to transfer to a lawful claimant, and is liable where a transfer is made to one not entitled thereto. Even in the case of a disputed transfer where there are adverse claimants, the corporation must correctly decide at its peril or present the matter by proper legal procedure to a court for decision. It must guard against forgeries in the signatures of officers, in the name of the holder and in the number of shares. It must be particularly careful in mak-

ing transfers for trustees, executors and other fiduciaries to avoid assisting them in making transfers that will violate the terms of the trust deed or will under which they are acting, or that will violate the general principles which limit a fiduciary in dealing with the estate. Special complications also arise in making transfers for administrators, guardians, attorneys in fact, holding corporations and trustees of voting trusts. The laws of many states require a court order as authority for permitting a transfer by a fiduciary. Transfer and inheritance taxes must also be paid, and failure or mistake in regard to payment or amount will often affix a penalty upon the corporation. These regulations differ in accordance with the statutes in the various states. In this respect, there must be examined the statutes of the state in which the corporation is organized, or the state in which the transfer is made and the laws of a state in which an executor, administrator, guardian, trustee or committee, etc., is appointed.

Talks on Foreign Corporations

No. 14: Imposition of Fines for Failure to Qualify under Foreign Corporation Laws.

Among the important means of enforcing compliance with foreign corporation laws by the various states is the imposition of fines. The authorized amount of these fines reaches as high as \$10,000 in Illinois (Sec. 67 g, Ch. 32, Hurd's Rev. Stats., 1915-1916) and

in Indiana (Sec. 4094, Burns' Ann. Stats., 1914). In Arkansas there is a penalty of \$500 to \$1,000 against the corporation and any officer, manager or agent representing the corporation in intrastate business, for each day of violation as a separate offense

(1916 Digest, Section 938). Nearly all the other states have statutes under which similar proceedings may be brought against the offending corporations, and fines collected. These statutory provisions are included under the heading of "Penalties for failure to qualify" in the leaflets issued by The Corporation Trust Company and entitled "Extracts from the Statutes of the Various States relating to the Admission of Foreign Business Corporations." These printed statements may be obtained without charge from any office of The Corporation Trust Company System by counsel who are interested in the qualification of a particular corporation in a state or group of states.

Many instances of the imposition of fines are not generally known, because the case is either compromised out of court or is not appealed and therefore is not published in the law reports.

Cases of the imposition of fines for non-qualification which have reached the higher courts, however, are sufficient evidence of the fact that these statutes are not dead letters. In Kentucky there are the decisions in *Com. v. Read Phosphate Co.*, 113 Ky. 32, 67 S.

W. 45 and *Larkin Co. v. Com.*, 172 Ky. 106, 189 S. W. 3. In Arkansas there is *Western Union Tel. Co. v. State*, 82 Ark. 309, 101 S. W. 748, and in Illinois there is *Finlay Brewing Co. v. People*, 111 Ill. App. 200. Penalty of \$1,000 against the *Howe Scale Company*, an Illinois corporation, for failure to qualify in Missouri was sustained by the higher courts of that state after prolonged litigation. *State v. Howe Scale Co.*, 253 Mo. 63, 161 S. W. 789, 182 Mo. App. 658, 166 S. W. 328, and 218 S. W. 359. Other impositions of the \$1,000 fine in Missouri are reported in *State v. Arthur Greenfield, Inc.*, 205 S. W. 619 and in *State ex rel Nelson v. S. P. Pond Co.*, 135 Mo. App. 81. In Virginia a fine of \$1,000 imposed by the State Corporation Commission upon the *Dalton Adding Machine Company* for transacting business in the state without first obtaining a certificate of authority was sustained by the Supreme Court of Appeals. *Dalton Adding Mach. Co. v. Commonwealth*, 88 S. E. 167.

In our next talk we will discuss further phases of the effect of failure to comply with foreign corporation laws.

Domestic Corporations

Colorado

Stockholders Conducting Business After Corporation Ceases to Exist, Individually Liable. The expiration of the time limit of a corporation under Rev. St. 1908, Sections 847 and 854, terminates its existence entirely and the three stockholders and directors continuing to conduct the business of the former corporation could not

defend successfully a tort action against them for injury to plaintiff's child by an employee of the former corporation on the ground that the corporation alone was liable. People co-operating in a business enterprise, not a corporation, and in connection with which a tort is committed, are liable whatever the title of their combination—partners, co-adventurers, or joint tort-feasors. *Bonfils et al. v. Hayes*, 201 Pacific 677.

Delaware

Compensation of Directors. Directors are presumed to serve without compensation, and the courts will scrutinize closely their claims for compensation. Therefore, the first directors of a newly organized corporation cannot legally vote to themselves, without authority from some other source, compensation for obtaining capital and a plant for a company and starting it off. When all the officers of a corporation are members of the board of directors and the directors vote to each director compensation for services rendered to the corporation the action is invalid, whether the services be ordinary or extraordinary, or within or without the regular duties of directors, unless there be some statute, charter or by-law authorizing such action, or it be authorized or confirmed by the stockholders. *Gahall v. Lofan*, 114 Atlantic 232.

Georgia

Meeting Cannot Be Held Outside State. A stockholders' meeting held outside the state of Georgia, in which the corporation was incorporated, is void. Hence, the minutes of such a meeting cannot be admitted in evidence. *Hening and Hagedorn v. Glanton*, 108 Southeastern 256.

Illinois

Preferred or Other Stock May Not Be Deprived of the Right to Vote. A recent decision by the Illinois Supreme Court holds that stock of an Illinois corporation cannot be deprived of the right to vote. The Watseka Telephone Company, an Illinois corporation, applied to the Secretary of State for permission to increase its capital stock and to issue preferred stock subject to the condition that the holders thereof should not have the right to vote as to any election or to consent to or refuse to consent to any corporate action, and that such right was waived by the owners and holders of such preferred stock as a condition and in consideration of its being issued by the company. Permission was denied by the Secretary of State. Mandamus proceedings were brought, but the writ was denied, the Supreme Court, in part, saying:

"The question presented in this case is whether the company has the right and power, under the constitution and laws of the State, to provide for preferred stock, the owner of which is expressly deprived of the right to vote for directors. This question depends upon the construction that should be given to section 3 of article II of the constitution of 1870, which reads as follows: 'The General Assembly shall provide, by law, that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.'

"Paragraph 28a22 of the General Corporation Act contains practically the same provisions as does section 3 just quoted, as to the shareholders voting for directors or managers. (Hurd's Stat. 1919, p. 730). Paragraph 4 of section 6 of the General Incorporation Act passed in 1919 provides that stock may be divided 'into such classes, with such preferences, rights, values and interests as may be provided in the articles of incorporation, or any amendment thereof' (Hurd's Stat. 1919, p. 723.)

"Counsel in this case seem to agree that at common law preferred stockholders, or any other class of stockholders, might be deprived of the right to vote for directors, and that said paragraph 4 of section 6 might be construed in accordance with the common law provisions were it not for the wording of section 3 of article II of the constitution.

"It is argued by counsel for respondent that section 3 of the constitution was intended to provide at least two things, that in all elections for directors or managers every stockholder should have the right to vote one vote for each share of stock for each office of director or manager to be filled, and that every stockholder should have the right to vote, in person or by proxy, for the number of shares of stock owned by him cumulating such shares and giving to one candidate as many votes as the number of his shares multiplied by the number of candidates shall equal, or distribute them among the candidates; while counsel for petitioner insist that this construction contended for by counsel for the State requires the use of the word 'and' in place of 'or' between these two portions of said section, and that the main, if not the only, purpose of the constitutional convention in inserting said section 3 was to confer upon the stockholders the right of cumulative voting for directors or managers; that by the use of the word 'or' in this section it was

intended to provide for alternative methods of voting by the stockholders, and that to give construction to 'or' as contended for by the State would practically defeat the main purpose of the constitutional convention

"The public policy of the State as shown by legislative enactments and in the decisions of this court, and particularly by the provisions of section 3 of article II of the constitution, must be held to be that the petitioner's by-laws and the proposed amendment of its articles of incorporation, which provided that the owners of preferred stock in said corporation should be deprived of the right to vote for directors or managers of the company, are contrary to the provisions of the constitution, and therefore the Secretary of State rightly refused to permit the petitioner to file the amendment to the articles of incorporation on the payment of the statutory fee." (People ex rel. Watseka Telephone Co. v. Louis L. Emerson, Secretary of State, Illinois Supreme Court, not yet officially reported.)

Kentucky

Section 192, Constitution, Inapplicable to Corporation Purposing Solely to Deal in Real Estate. A corporation was organized for the purpose of dealing in real estate. In an action to collect a subscription to its capital stock, the defense was interposed that the company proposed to hold some of its real estate for a longer period than five years, which action on its part would subject the property to escheat and render its stock of no value under section 192 of the State Constitution. This section imposed the restriction that a corporation shall not hold any real estate except such as may be proper and necessary for carrying on its legitimate business, for longer period than five years, under penalty of escheat. It was held inapplicable to corporations whose sole business was the dealing in real estate. It cannot be said that the holding of real estate is not necessary and proper for carrying on the legitimate business of a corporation when the holding of real estate is the very business in which it is engaged, and it cannot carry on its business without holding real estate. *Cree v. Associates Co.*, 234 Southwestern 288.

Maine

Reorganization of Company By Bondholders. Upon the reorganization of an insolvent corporation by its bondholders under Chapters 51 and 57, Revised Statutes, the entire management and control of the corporation became invested in a new set of shareholders who could elect the officers and control the policy of the business.

They succeeded to the rights of the shareholders in the former corporation and to their equitable ownership of the assets under Rev. St. Chap. 51, Sections 88, 104, so that such reorganization operated as an assignment of a lease-hold of the corporation by operation of law. *Clifford et al. v. Androscoggin & K. R. Co.*, 115 Atl. 511.

Massachusetts

Directors May Mortgage Corporation's Property. A mortgage of the whole of corporate property in accordance with Section 4 (F), Chapter 109, Revised Laws of Massachusetts, given upon authority of the board of directors under section 19, is valid, notwithstanding section 40, relating to the powers of stockholders. *William H. Haskell Mfg. Co. v. Nelson Blower and Furnace Co.*, petition of Commerce Trust Co., 275 Federal 206.

North Carolina

Directors of Corporation Who Paid Dividends When Debts Exceeded Two-thirds of Assets, Liable to Trustees for Debts. The directors of an insolvent corporation who paid out of the funds of the corporation dividends where the indebtedness of the corporation exceeded two-thirds of its assets are liable to trustee in bankruptcy of the corporation under section 1179 of the Consolidated Statutes, for the amount of such debts and the proper costs and charges of the bankruptcy proceeding. *Claypoole v. McIntosh et al.*, 108 S. E. 433.

Pennsylvania

Unanimous Vote of Stockholders Authorizing Issuance of Stock Valid, Without Statutory Notice of Meeting. The issuance and sale of stock by a corporation pursuant to the unanimous vote of all the stockholders was valid, although the meeting at which it was authorized was not called for that purpose, upon sixty days' notice, as provided by statute. *Scranton Axle and Spring Co. v. Scranton Board of Trade*, 113 Atlantic 838.

Revival of Charters. A corporation chartered in 1904 for a term of three years, which term expired in 1907, sought a revival of its charter under Section 2 of the Act of June 25, 1895, P. L. 130. The Act provided for extending for a period of twenty-five years "the expired charters of corporations, or those which shall hereafter expire." It was held that the Act was remedial and applied to all cases where the remedy is needed, unless definitely restricted, and the charter might be revived even though the corporation was created after the passage of the statute. (Opinion from Attorney-General's Department, *The Legal Intelligencer*, Jan. 27, 1922.)

On What Date Did YOU Receive the New

Tax Regulations—Released March 1?

The Government's new income and profits tax Regulations 62 (the "Regulations 45" of the 1921 Act) were released by the Bureau of Internal Revenue March 1.

On what date did YOU receive them?

These regulations, for which corporations and individuals have been holding their books open, were RECEIVED by all subscribers to the Federal Tax Service—east or west, north or south—on March 1—the date of their release at Washington.

And not only that—

The new Regulations supplied by The Corporation Trust Company to its subscribers were referenced to show, for comparison and analysis, the CORRESPONDING article, if any, in Regulations 45.

And further—

The new Regulations supplied by The Corporation Trust Company to its subscribers were also CROSS-REFERENCED so any provision in Regulations 45 could be traced to its corresponding provision, if any, in the new Regulations.

And all this in subscribers' hands on March 1—the very date on which the new Regulations were officially released at Washington.

Were you behind subscribers to The Corporation Trust Company's Federal Tax Service in getting this long waited for information?

The question is important to YOU.

To get this great mass of vital information compared, referenced and cross-referenced, and then actually delivered into our subscribers' hands on the very date authorized by the Government for its release—and that without regard to the subscribers' location, whether in California or New York—was an exemplification of "service" never surpassed.

Yet it is only what subscribers to The Corporation Trust Company's Tax Service are accustomed to—and what they know they will receive whenever new information is released.

Now do YOU know that you will receive all new and vital tax matters with equal promptness?

The Revenue Bureau has extended the time for the filing of complete returns for corporations to June 15. There will be many new and important rules, revisions of regulations, Treasury decisions, etc., from time to time. You MUST have them—and will get them. But the question is, will you get them, as our subscribers do, almost simultaneously with their promulgation by the authorities, or will there be a period of time after each one is announced at Washington when you are without the latest official information that perhaps others have and are using?

This is a serious question.

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Wilmington, duPont Bldg.

(Corporation Trust Co. of America)

Albany Agency, 158 State Street

Buffalo Agency, Elliott Square

Foreign Corporations

Arkansas

Taking Orders By Drummers Constitutes Interstate Commerce. An order for law books was taken in Arkansas by the traveling salesman of a foreign corporation. The books were shipped to the purchaser under a contract by which the title was reserved in the foreign corporation. This did not constitute "doing business" in Arkansas so as to require qualification by the foreign corporation as a condition precedent to its right to recover on the contract of sale. The contract was consummated when the order was accepted at the home office of the corporation outside of Arkansas. *Coblentz & Logsdon v. L. D. Powell Co.*, 229 S. W. 25.

Massachusetts

Necessity of Examination Into Internal Affairs of Foreign Corporation No Prevention of Relief to Stockholder on Account of Fraud. Although, ordinarily, the courts have no jurisdiction to examine into the internal affairs of a foreign corporation, it will do so when it is shown that the foreign corporation was merely a tool of the other defendants in defrauding plaintiff, and in some form a satisfactory remedy justly may be given. *Raynes v. Sharp et al.*, 130 N. E. 199.

Michigan

Furnishing an Inspector and Making Executive Decisions are not Doing Business so as to require qualification as a condition to recovery on a contract by a foreign corporation, according to a recent opinion of the United States Circuit Court of Appeals. A Canadian corporation, whose officers and managers lived in Detroit, made a contract with a Michigan corporation for the manufacture of brass parts for primers, which were to be completely assembled and loaded by the Canadian corporation in Ontario. The contract was negotiated and signed in Detroit, and as manufacturing difficulties developed, consultations as to what should be done were had in Detroit and a representative of the Canadian corporation acted as an inspector or "production man" in the Michigan corporation's plant. The Canadian corporation, upon bringing an action to recover its advance payment and for damages because of alleged non-performance by the Michigan corporation, was confronted with the defense that it had not qualified as a foreign corporation in Michigan. This defense is overruled because the Canadian corporation was not "doing business" in Michigan. *Michigan Lubricator Co. v. Ontario Cartridge Co.*, 275 Fed. 902.

Missouri

Taking of a Single Conveyance of Real Estate situated in Missouri and afterward conveying the real estate to another, standing alone is not transacting business in the state within the prohibition against unqualified foreign corporations. *Parker v. Wear*, 230 S. W. 75.

New York

Buying Doing Business as Much as Selling. William Spiegelman & Co., Inc., incorporated under the laws of Pennsylvania, conducts a wholesale furniture business in Philadelphia. Purchases were made by mail from time to time from the National Furniture Co. of New York. In addition to these mail orders, the treasurer of the purchasing corporation was accustomed to place orders in person while attending the semi-annual exhibition of furniture manufacturers at Jamestown. The Appellate Division, Fourth Department, held that it thereby did business in New York, so that it could be sued therein by service of process upon its treasurer. The Court, in part, said: "A corporation coming here by its officers to examine goods, and making a contract to purchase goods, for which it afterward refuses to pay, is doing business here. It would be doing a very profitable business if the seller could not compel payment where the contract was made when the defendant came on another business errand of the same character." *National Furniture Co. v. William Spiegelman & Co., Inc.*, 190 N. Y. Supp. 831.

Unqualified Foreign Corporation Debarred from Filing Claim in Court of Claims. A foreign corporation under contract with the State of New York constructed a certain state highway, but had not procured a certificate of authority to do business in the state before it signed the contract. The Appellate Division held in 188 N. Y. App. Div. 500, that it was not entitled to file a claim with the Court of Claims and this holding is sustained without opinion by the Court of Appeals. *Amos D. Bridge's Sons, Incorporated v. The State of New York*, 231 N. Y. Memo. 24.

Pennsylvania

No Examination Into Internal Affairs of Foreign Corporations. A bill in equity was brought by a minority stockholder for himself and such other stockholders as might see fit to join him, against a foreign corporation and certain of its directors to have a resolution declared invalid. He alleged that the directors who constituted a majority of the board, contracted with a corporation which they organized and were largely interested in to sell its products at a

higher commission rate than another concern which had offered a proposition at a lower figure. It was held, that this constituted taking jurisdiction of a case involving the internal management of a foreign corporation and the bill was dismissed. Judge Schaffer, in quoting from another case, said: "Our courts will not exercise visitatorial power over corporations chartered in another state, nor will they interfere in any way in determining the rights or duties of the directors or officers of the corporation under the laws of a foreign jurisdiction. These are matters wholly within the jurisdiction of the courts of the state which creates the corporation." *Thompson v. Southern Connellsville Coke Co. et al.*, 112 Atl. 533.

Taxation

Massachusetts

Excess Assets of Corporation Accruing from Profits When Distributed on Liquidation Must Be Regarded as "Accumulated Profits" for Income Taxation. Plaintiff owned 220 shares of stock in a corporation of the par value of one hundred dollars each. Upon the liquidation of the corporation, plaintiff was entitled to \$38,500 as the corporation had accumulated large profits over a period of years. On the question whether \$16,500, the amount above the par value of the shares, was to be considered capital or accumulated profits under the exclusion and inclusion provisions of St. 1916, c. 269, section 2 (G. L. c. 62, section 1 (g)), it was held, that the amount must be considered as "accumulated profits" and hence, subject to the income tax. *Moore v. Trefry*, Tax Commissioner, 130 N. E. 59.

Montana

Tax Imposed Upon Property of Foreign Corporation Outside of State Invalid. A foreign corporation, doing business in the State of Montana, increased its capital stock from \$5,000,000 to \$40,000,000. It tendered to the Secretary of State, for filing, a certificate of increase, together with a filing fee of \$3.00. The Secretary of State refused to file the certificate except upon the payment of \$3,685, the fee computed according to the provisions of Section 165, Revised Codes. Payment was made under protest, and action brought to recover the difference between the amount tendered and the amount demanded. Section 165 was held to be unconstitutional, as violative of the due process clause of the Fourteenth Amendment by imposing a tax upon the total capital stock when only a portion thereof was represented by the property and bus-

business of the corporation in the state. *J. I. Case Threshing Machine Co. v. Stewart, Secretary of State, 199 Pacific 909.*

New Jersey

Ascertaining Value of New Jersey Stock Commingled with Other Stock for Purpose of Transfer Tax. In order to ascertain the value of New Jersey stocks commingled with others and pledged as collateral for debts, for the purpose of the transfer tax, it is necessary to ascertain the total value of the securities pledged for each debt, deduct the debt from the value of the securities pledged to secure it, and then ascertain the percentage of this equity to the value of the securities pledged. By multiplying the value of the New Jersey securities by this percentage, the equity in the New Jersey securities is ascertained. *MacMiller et al. v. Bugbee, State Comptroller, 115 Atlantic 341.*

New York

Transfer Tax on Stock of Non-Resident in Foreign Corporation Owning Real Estate in New York. A transfer tax under section 220 (21) of the Tax Law was levied upon the interest of a non-resident decedent in shares of stock in a foreign corporation owning real estate in the State of New York. The tax was computed upon such proportion of the value of decedent's stock as the real estate bears to the value of the entire property of the corporation wherever situated. In an action by the executor to have the tax set aside as unconstitutional or declared applicable only to stock in corporations exclusively engaged in the ownership of real estate, and therefore not applicable to the estate which he was administering, it was held: (1) that the tax was a valid exercise of the taxing power and hence, constitutional; (2) that the tax was not applicable only to stock in corporations exclusively engaged in the ownership of real estate, but to all corporations which owned real estate in New York. *Matter of the Estate of Lena McMullen, Deceased, 114 Misc. 505.*

Tax Levied for Privilege of Doing Business in State. A foreign corporation organized under the laws of Great Britain and authorized to do business in the state, paid an annual franchise tax under section 209 of the Tax Law. It was computed by a comparison of the total assets with the assets in New York. This proportion was then taken of the total net income, and the net income in New York State thus ascertained. As a matter of fact, no net income was derived from its business in New York. The question considered was as to the constitutionality of the Tax Law, which made as a basis of relator's taxable net income in New York a portion of its net income earned wholly outside the State. The tax was held to be primarily for the privilege of doing business within the

state, although in practical operation it was upon the income of the corporation. *People ex rel. Bass, Ratcliff and Gretton, Limited v. State Tax Commission*, 133 Northeastern 122.

Pennsylvania

Agreement for Exchange of Stock not Required to Bear Stock Transfer Tax Stamps. An action was brought for breach of contract to transfer stock, a memorandum of the offer having been verbally accepted. The defence interposed was that the memorandum representing the agreement did not bear a stock transfer stamp tax as required by the act of June 4, 1915 (P. L. 828). It was held that this was unnecessary, as the intention of the act was to tax the actual transfer of stock by placing the stamp either on the stock certificate or on the agreement of sale. In the present case, the transaction never reached the stage of an actual transfer. *Alexander v. Soulas*, 112 Atl. 538.

Taxation of Bonds of Foreign Corporations Held by Residents of State. The Act of July 15, 1919, P. L. 958, imposed on non-resident treasurers of foreign corporations, the duty of acting as agents for the Commonwealth in collecting the tax due from the individual residents of Pennsylvania who own bonds of such corporations. It was held to be unconstitutional. *Commonwealth v. American Ice Co.*, 10 Pennsylvania Corporation Reporter 289.

Some Important Matters for March, April, May and June

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service maintained by The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1. Domestic and Foreign Corporations engaged in mining of any kind.

Report to Corporation Commission and Registration Fee due during June. Domestic and Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before June 1st. Domestic and Foreign Corporations.

CALIFORNIA—Report on General Franchise due within 10 days after first Monday in March. Domestic and Foreign Corporations.

COLORADO—Annual License Tax due on or before May 1st. Domestic and Foreign Corporations.

CONNECTICUT—Income Tax Return due on or before April 1. Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between 3rd Tuesday in March and July 1. Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1st and June 1st. Domestic companies having capital stock.

Annual Income Tax Return due between January 1st and April 30th. Domestic and Foreign Corporations.

INDIANA—Corporations Report due between June 1st and July 31st. Domestic Corporations.

KANSAS—Annual Report and Franchise Tax due between January 1st and March 31st. Domestic and Foreign Corporations.

MAINE—Annual Tax Return due on or before June 1st. Domestic Corporations.

MASSACHUSETTS—Franchise Tax Return due between April 1st and April 10th. Domestic Corporation and certain Foreign Corporations.

MONTANA—Annual Report due in April or May. Foreign Corporations.

Annual License Tax based on Net Income due between June 1st and June 15th. Domestic and Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15th.
Foreign Corporations.

NEW JERSEY—Annual Tax Return due on or before first Tuesday of May.
Domestic Corporations.

NEW YORK—Annual Return of withholding agents due between January
1st and April 15th. Domestic and Foreign Corporations.

NORTH CAROLINA—Income Tax Return due on or before March 15th.
Domestic and Foreign Corporations.

Capital Stock Report to determine amount of franchise tax due
between May 1st and July 1st. Domestic Corporations.

OHIO—Annual Report during May. Domestic Corporations.

OREGON—Annual Statement due during June. Domestic and Foreign
Corporations.

QUEBEC—Sworn statement for Treasury Department due on or before
May 1st. Domestic and Foreign Corporations.

TENNESSEE—Annual Report and Franchise Tax due on or before July
1st. Domestic and Foreign Corporations.

TEXAS—Annual Capital Stock Report due between first day of January
and the 15th day of March. Domestic and Foreign Corporations
that are required to pay annual franchise tax.

Annual License Tax due on or before May 1st. Domestic and
Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March
15th, but see announcement on first page. Domestic and Foreign
Corporations.

VERMONT—Extension of Certificate of Authority due between January
1st and March 31st. Foreign Corporations.

List of Stockholders due on or before April 5th. Domestic and
Foreign Corporations.

WASHINGTON—License Tax on or before July 1st. Domestic and Foreign
Corporations.

WEST VIRGINIA—Annual Report due in April. Foreign Corporations.

Tax Statements due on before July 1st. Domestic Corporations.

Annual License Tax due on or before July 1st. Domestic and
Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before June
30th. Foreign and Non-Resident Domestic Corporations.

WISCONSIN—Annual Report due between January 1st and April 1st.
Domestic Corporations.

Annual Report due between January 1st and April 1st. Foreign
Corporations.

PUBLICATIONS

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

Shares Without Par Value. This pamphlet contains what we believe to be the only published synopses of the 23 non-par value laws in force at the present time.

New York-Non Par Value Law, as Amended. Includes important changes by the 1921 Legislature.

What Constitutes "Doing Business." (Available only to members of the bar.) The more important court decisions on "doing business," handed down in the course of the past ten years, have been reported in The Corporation Journal. These have been arranged under state headings and are reprinted in pamphlet form.

Talks on Foreign Corporations. A series of articles has been appearing for some time under this heading in The Corporation Journal. For the convenience of those interested in the subject of foreign corporations, we have reprinted "Talks" Nos. 1-8 in pamphlet form. The articles will continue to appear in The Corporation Journal.

Revenue Act of 1921. Contains full text of the new Revenue Act, approved by the President November 23, 1921.

Business Corporations Under the Laws of Delaware. Gives advantages under the law, statutory requirements and forms; includes a description of shares without par value. The General Corporation Laws are published in a separate booklet.

Extracts from the Statutes of the Various States Relating to the Admission of Foreign Business Corporations (revised to January, 1922) may be had by COUNSEL who are interested in the qualification of a particular corporation in a state or group of states. Please indicate in which states you are interested. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the states under consideration.

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